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1 be done quarterly, so that's what I put down.

2 BY MR. SHOOK:

3 Q. You filled out a form for Buzz Telecom
4 just to get something in front of the FCC?

5 A. **Just to make sure that they were**
6 **registered and the process was started when it**
7 **was supposed to be started. So it didn't wind up**
8 **being something that was, say, this year and it's**
9 **already three quarters behind. I wanted to make**
10 **sure it was started on time.**

11 Q. Other than the two documents that we
12 had looked at previously, the June 26 document
13 from yourself and the July 5 document from
14 Kurtis, are you aware of any discussions
15 involving the need to file FCC form 399-A or Q?

16 MR. HAWA: 499.

17 MR. SHOOK: 499. Did I say 399? 499.

18 THE WITNESS: See, it's easy to get
19 confused on these forms.

20 MR. SHOOK: Absolutely.

21 THE WITNESS: No. No, I'm not. I'm

1 **finalized and I would send it out.**

2 Q. And this concerns something going on
3 with the Maine PCU.

4 A. **Slamming complaints from the State of**
5 **Maine.**

6 Q. Do you remember anything specific
7 about what the Maine PUC was concerned about?

8 A. I think we had a similar problem to
9 that in Vermont where we had something missing
10 from the verification scripts. So we were
11 sending them over taped verifications, but they
12 didn't find them valid.

13 Q. And apparently, there's a fairly large
14 number of complaints?

15 A. Uh-huh. I don't remember the exact
16 number. We had almost 100 complaints in Alabama,
17 so I guess it would be around that number.

18 Q. In terms of the handwritten note that
19 appears from Keanan, it looks like it's dated
20 7-12, he's asking you to do something.

21 A. What I'm saying to them is, "Do you

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1 pretty sure that it was turned over to Kurtis.
2 At this point, I knew that I was no longer going
3 to be there, so I thought it was best to leave it
4 to him and the professionals.

5 BY MR. SHOOK:

6 Q. At this point, you're talking about
7 the October, 2002 time frame?

8 A. Yes.

9 Q. Which is related to the preparation
10 and filing of the 499-A for Buzz?

11 A. Correct.

12 Q. The next document I want to show you
13 is Bate Stamp 00705. There's some handwriting on
14 it, so it's not entirely clear to me what the
15 date is. But it appears to be 7-8-02.

16 A. What this looks like is, I wrote an
17 initial letter to Kurtis and Keanan. Keanan
18 responded. So my response was to write a rough
19 draft and forward it to Kurtis. And then I would
20 assume that I got it red-penned, a copy of a
21 letter back to him. And then it would be

1 **want me to -- here's all the information. Do you**
2 **want to write a response." The reason I sent**
3 **this is because Kurtis had recently before this**
4 **taken the Kansas information from me and written**
5 **his own response. So I was giving him the**
6 **opportunity to do so again. Keanan wanted me to**
7 **just write a letter and let Kurtis review it.**
8 **And if he liked it or didn't like it, he could**
9 **scratch it out and I would make the changes he**
10 **would request. Usually, I would write a**
11 **rough-draft letter in any situation and give it**
12 **to them. And they would change as they thought**
13 **appropriate.**

14 Q. The next document bears a date of
15 7-18-02. It's Bate Stamp 00701.

16 A. This is, again, concerning Mike
17 Norville, the complaints.

18 Q. And Tom Greenberg (phonetic) is who?

19 A. He was our attorney at the time for
20 EEOC matters.

21 Q. And in terms of the people this is

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1 sent to, the board, that's supposed to be Kurtis
2 and Keanan?
3 A. Yes.
4 Q. And CA is you?
5 A. Yes.
6 Q. The next document I'm going to show
7 you is Bate Stamp 00700 dated 7-18-02.
8 A. Russ Millbranth is or was at the time
9 our attorney handled corporate issues like
10 updating our books and that type of thing. What
11 we had done is, I had drafted agreements between
12 Avatar and all the other companies just to try to
13 differentiate what went where. And we had turned
14 over those agreements and all of our corporate
15 books to him. And he was rewriting them do be
16 what Kurtis and Keanan wanted. So that's just me
17 telling them that I was giving him books and as
18 much information as he needed.
19 Q. So you're simply updating Keanan on a
20 situation involving the corporate books?
21 A. Basically, yes. I would -- if

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1 something went to an attorney, I would be their
2 contact to get them any information they needed.
3 And then when they wanted to work on specifics,
4 they would call Kurtis and Keanan and sort it
5 out.
6 Q. So in terms of president, the
7 president is Keanan?
8 A. Uh-huh.
9 Q. And then the cc for the COB, that
10 means that a copy was sent to Kurtis?
11 A. Correct. At various times, I would
12 report to one or the other. It would kind of
13 depend who was in town or who was out for a
14 period. But I would specifically report to
15 Keanan for a period, then to Kurtis. And
16 typically when I was reporting to Keanan, I would
17 always cc Kurtis so he could be kept up on what
18 was going on.
19 Q. The next document I want to show you
20 is dated July 20, 2002. And it's Bate Stamp
21 00693.

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1 A. This is a note. I had sent Keanan a
2 note requesting that we implement a scrubbing
3 system for leads because we were calling people
4 who were either on do not call lists or what have
5 you. And I thought that we should implement a
6 system. And he felt that I should implement the
7 system. I felt that it was the responsibility of
8 our operations people because they actually did
9 all of our programming and handled our database.
10 And I didn't have the knowledge to do it. So
11 he's sending the note back saying basically, you
12 do it.
13 Q. So he's basically telling you to do
14 something, but not necessarily giving you what
15 you needed in order to get it done?
16 A. Yes. He kind of wanted me to figure
17 it out.
18 Q. The next document is Bate Stamp 00697.
19 It's dated July 23, 2002.
20 A. This was written by Kurtis. Basically
21 what he's saying is that we're not handling the

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1 information coming from the EEOC in a timely
2 manner. The reason that I walked the letter in
3 to him and showed him is because I had just
4 gotten it from Tom Greenberg (phonetic). Tom,
5 being our attorney on those kind of matters, I
6 kind of trusted his opinion for the speed with
7 which something had to get in. And he told me
8 that he had requested the time already. So, I
9 guess, Kurtis felt that we were not rushing
10 things along the way that it should have been
11 done.
12 Q. When you mentioned that Tom had
13 already requested a different time, are you
14 referring to the response that had to be filed
15 and that he had already received an extension of
16 time to file that response?
17 A. He left a message for his contact at
18 the EEOC requesting a response which he
19 conditioned a guarantee that they would issue it.
20 That was standard protocol. He had not received
21 a response yet. He received it a day or two

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1 later and it was granted. And then another
2 extension and then another extension. I guess
3 it's common that that happens.

4 Q. So, in fact, the matter referred to
5 here by Kurtis was not actually late?

6 A. It wasn't late. It was technically
7 late according to the letter. And Kurtis just
8 wanted to, I guess, you know, tell us to get
9 going on it. He wanted it handled faster than it
10 was being handled.

11 Q. The next document that I want you to
12 take a look has Bate Stamp Numbers 00841 and
13 00842. It appears to be a draft letter. It
14 bears the date of July 24, 2002.

15 A. This is the response letter that we
16 previously discussed.

17 Q. Was this letter actually -- or a
18 variant of this letter actually sent to the State
19 of Maine?

20 A. I don't remember if it was exactly
21 that one. But something of that nature went to

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1 them, yes.

2 Q. This letter is meant to do what?

3 A. More than anything else, just begin
4 the discussions on how we were going to handle
5 the situation.

6 Q. In terms of the slamming complaints?

7 A. Yes.

8 Q. So among other things, this explains
9 to the State of Maine the process that Business
10 Options had used to verify?

11 A. Correct.

12 Q. There's a -- the fourth paragraph in,
13 the first sentence reads "We have discontinued
14 the practice of resubmitting orders of customers
15 who have dropped off of our service." What is
16 that all about?

17 A. That is, again, the reprovisioning of
18 people who had been off -- they were on for a
19 week or so and then dropped off. And we
20 reprovisioned them.

21 Q. And so you're informing the State of

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1 Maine at this point that you're going to
2 discontinue that practice?

3 A. Yes.

4 Q. Or you had discontinued that practice?

5 A. We had discontinued, yes.

6 Q. And that discontinuance was for all
7 customers or simply customers in the State of
8 Maine?

9 A. I believe in the State of Maine.

10 Q. But it continued with respect to other
11 customers for a period of time?

12 A. I believe so.

13 Q. Do you know whether the practice
14 continued up to the time that you left the
15 company?

16 A. I don't know. I would assume that it
17 did. I know that in specific areas, I would send
18 a note and ask that it not happen. And they
19 would stop doing it. The State of Maine, what
20 they wanted us to do was call each customer back
21 and reverify. And I made that suggestion. And

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1 that was considered not time effective. So I
2 asked them to just stop doing it period. And
3 they did so.

4 Q. "They," being the salespeople or the
5 people under Elizabeth?

6 A. The people under Elizabeth. They
7 would have had to call, it would have been
8 Shalanda Robinson. And basically the people who
9 have called would have been the customer service
10 representatives. They would have called and
11 said, "We're going to reprovision you." And they
12 didn't see that it was time effective in
13 accordance with the cost and the income that we
14 would derive from it.

15 Q. Taking a look at the paragraph that
16 begins toward the bottom of the pages and carries
17 over to the next sentence where it speaks of "Any
18 sales representative who dealt with a customer in
19 a deceptive fashion." What is -- how did you
20 come to that knowledge?

21 A. Because of the taping. We would

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1 listen to their tapes. And some you would
2 hear -- some reps would say, "This is so-and-so
3 from Business Options. I'm calling to sell you
4 the AT&T product." Or something like that. And
5 once you hear that, they had to be fired
6 immediately. And you have people who do that.
7 So as soon as we would hear something like that,
8 they were gone.

9 Q. Who would actually do the -- this is
10 in July of 2002. Who would do the firing at that
11 point of such individuals?

12 A. It would have been Kelly Adwell if she
13 was still with the company or Gene.

14 Q. Did Kelly Adwell report to Gene?

15 A. Yes.

16 Q. For what period of time did Kelly
17 report to Gene?

18 A. From his start until she left the
19 company. I think that he started sometime in
20 May. And she was there for two or three months
21 before she left.

1 That's basically his administrative assistant.

2 Q. And then underneath the underlined
3 corporate affairs, that would be you?

4 A. That's me, correct.

5 (A short break was taken.)

6 Q. The next document I'm going to show
7 you is a five-page document. It's Bate Stamp
8 00817 through 00821. I only have a couple of
9 questions. And the first one is, have you ever
10 seen this letter before?

11 A. I can't say that I've seen this
12 specific letter before. But I have seen letters
13 concerning the Josh Child's (phonetic) incident.

14 Q. And Thomas Greenberg is whom?

15 A. He's our attorney that handles
16 anything concerning human resources or EEOC or
17 anything like that.

18 Q. In terms of the -- the part that I'd
19 like you to focus on is subpart A which talks
20 about the respondent's and the employer's
21 business. If you could, just read that material

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1 Q. The next document I want to show you
2 is dated 8-5-02. It's Bate Stamp 00989. It
3 appears that there are some other documents that
4 go with it. So let me hand you those. Bate
5 Stamp 00990 through 00993.

6 A. If I remember correctly, this was a
7 program where we were going to, once we had
8 someone on our service, go through our database
9 of customers and sell them websites and web
10 hosting, web design, that kind of thing. And
11 this was -- what we did is, we requested some
12 information from USBI about fees. They said,
13 "Well, if you're going to charge fees on
14 someone's telephone bill, you have to get
15 scripts, welcome letter, everything approved by
16 us." And that's why that went out to USBI.

17 Q. And in terms of the compliance report,
18 to whom it was directed, COB would be Kurtis?

19 A. Correct.

20 Q. And via A/COB, what's that?

21 A. Assistant chairman of the board.

1 to yourself.

2 (Witness Reviewing Document).

3 Q. Do you know the source of Mr.
4 Greenberg's information?

5 A. Me, more than likely.

6 Q. More than likely?

7 A. Myself or Kurtis. We're the only ones
8 who ever spoke to him.

9 Q. From what you've read there, would it
10 be your belief that the information that Mr.
11 Greenberg has stated is accurate?

12 A. Yes.

13 Q. Next is a memo dated 9-4-02. It's
14 Bate Stamp 00890. It looks like it's to COB and
15 it's from CA. What is going on here?

16 A. This is the case in Maine where they
17 had slamming complaints. And I had a conference
18 call with the representatives there basically to
19 try to step forward on sorting out the case.

20 Q. And it's -- according to this memo,
21 it's Maine's position that there are 76 clear

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1 violations of whatever?

2 A. Yes.

3 Q. Toward the end, there's a reference to
4 the sales manager at the time has been dismissed
5 although Mike was actually the sales manager for
6 most of the period, I believe, that Albert had
7 blatantly allowed the staff to lie. Who is the
8 Mike referring to?

9 A. Mike Norville.

10 Q. And the reference to the sales
11 manager, who was that supposed to be?

12 A. Mike was the sales manager for a time
13 before he got promoted. Albert Peers was a sales
14 manager for a very short period of time. He was
15 promoted after Mike's indefinite suspension. And
16 he wrote his own script that he distributed to
17 the staff without our knowledge. It was just a
18 blatant, "I'm calling from AT&T" type of script.
19 And he called Maine -- I think it was just Maine,
20 possibly Maine and Vermont -- for a couple of
21 weeks. We discovered the script and fired him.

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1 Q. Who is the "we"?

2 A. Somebody from verifications brought it
3 to, I think, they brought it to Gene's attention.
4 And he came and asked me if I had approved any
5 changes to the script. I said no. They went in
6 and discussed it with Albert. And Albert felt
7 that he had the right to change the script to
8 anything he wanted to get sales numbers. He
9 wasn't. So he was dismissed.

10 Q. Do you have any knowledge as to
11 whether the sales script in question came to
12 anybody else's attention besides Gene and
13 yourself?

14 A. I know that it came to Kurtis and
15 Keanan's attention after we discovered it. I
16 think Kurtis was actually the person who fired
17 the guy. As far as I know, nobody in any
18 managerial position besides Albert and
19 potentially Kathy Olive had any knowledge of it
20 until we found out.

21 Q. And the person that you were talking

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1 about being fired, that's Albert?

2 A. Albert Peers, P-E-E-R-S.

3 Q. This is a real long shot here, do you
4 happen to know if he's still in the area?

5 A. I have no idea.

6 Q. He's the not a guy you've kept up
7 with?

8 A. No. He was with us probably for a
9 two-month period. And he was high sales. And we
10 were looking for somebody who was an older guy
11 probably in his mid or late 30s compared to the
12 rest of our sales staff. And he had constantly
13 been asking to be put in a managerial position.
14 And they elected to do so.

15 Q. And "they" is whom?

16 A. Kurtis and Keanan.

17 Q. From what you're telling me, I'm
18 drawing the inference that you and Gene did not
19 find out about the problematic sales script until
20 after the State of Maine brought it to the
21 attention of the company?

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1 A. Correct. Well, no. I think we found
2 out before they brought it to our attention, but
3 just before. I think that we were going through
4 the internal turmoil, figuring out what to do
5 when they called and said, "Hey, we got a bunch
6 of complaints." And then we had to deal with
7 that also.

8 Q. Did you actually see the sales script
9 that made the reference to AT&T?

10 A. I don't remember if it was
11 specifically AT&T. But they were claiming that
12 they were one of the big three. I saw a copy of
13 it. Basically what he did is, he had made a lot
14 of sales. And people would come up and say,
15 "Hey, what are you doing that you can make these
16 sales?" He'd say, "Well, let me write something
17 down for you." So he'd write out the script for
18 them and give it to them. And then someone to
19 come to them and say, "Hey, why as you doing
20 this?" So in that way, it got disseminated to
21 most of the staff. There were certain staff

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1 members who had been with us for a while who
2 said, "I'm not going to use that script" because
3 they knew better. But salespeople, especially
4 telemarketers, are not a very disciplined group
5 to begin with. So if we were on them constantly,
6 it was very easy for things to get out of hand
7 very quickly.

8 Q. And this activity with respect to
9 Albert occurred under Gene's watch?

10 A. I don't think Gene was there when he
11 got started. This is -- Albert worked as the
12 sales manager. He worked for Kurtis. Kurtis
13 would have then been the VP of sales just because
14 there was no person in that slot.

15 Q. Did this take place during the period
16 of time after you were no longer VP of
17 administration?

18 A. Correct.

19 Q. But before Gene came on the scene?

20 A. I think it started before Gene. He
21 may have gotten there right as we were sorting it

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1 out.

2 Q. But Gene knew that Albert had done
3 this?

4 A. No. He found out. He found out and
5 brought it to me. As soon as he found out, he
6 put an end to it. He didn't know of it
7 while it was occurring.

8 Q. Did Gene fire Albert?

9 A. I don't know if Gene fired him or
10 Kurtis fired him.

11 Q. But the firing took place while Gene
12 was VP of administration?

13 A. I believe so.

14 Q. If there's a personnel record, of
15 course it would reflect the time, the exact time?

16 A. Yes. I know that I didn't fire him.
17 The possibilities are Gene and Kurtis. Possibly
18 Kelly Adwell, but probably not because he was a
19 manager. And usually you wouldn't have a manager
20 fire another manager. So I would assume that
21 Kurtis or Gene did it.

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1 Q. All the cc's on the bottom, the cc to
2 the president, is that supposed to be Keanan?

3 A. Yes.

4 Q. And VPX, who is that supposed to be at
5 this time?

6 A. Kurtis at that time.

7 Q. VPA would be Gene?

8 A. Uh-huh.

9 Q. And VPO would be Elizabeth?

10 A. Yes.

11 Q. The next document I want to show you
12 is dated 10-2-02. It's Bate Stamp 00688.

13 A.

14 (Witness Reviewing Document.)

15 Q. In terms of "to the board," is that
16 supposed to be Kurtis and Keanan?

17 A. Correct.

18 Q. Anybody else?

19 A. No.

20 Q. CA is you?

21 A. Yes.

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1 Q. And the cc's, again, the VPA would be
2 Gene, the VPO would be Elizabeth and VPX would
3 be?

4 A. Kurtis.

5 Q. Kurtis.

6 A. No. Unless -- in October, by then,
7 Mike was back in that position.

8 Q. Mike, as in Norville?

9 A. Mike Norville, yes.

10 Q. And you're updating the Tennessee
11 situation. What's going on with Tennessee?

12 A. The State of Tennessee, our licensing
13 with their PUC was revoked almost immediately
14 back in '96 or '97 when they got licensed, we
15 were not aware of this. We were selling there.
16 And we got a couple complaints. And they said,
17 "Hey, wait a second. You guys are not licensed."
18 The reason it was revoked is because you have to
19 issue a surety bond to the state. We did not do
20 so. So I went through the process of getting
21 relicensed. And this is saying -- telling them

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1 basically that we have a surety bond. It's being
2 done. And then we'll be okay to sell there
3 again.

4 Q. I tried to keep this chronological and
5 I messed up a little bit here. What I'm going to
6 show you now is a document that bears a date of
7 September 5, 2002. And it's Bate Stamp Numbers
8 05512 through 05524.

9 (Witness Reviewing Document).

10 Q. In addition to all the other wonderful
11 things we've been talking about, you have to be
12 involved in tariffs?

13 A. Yes.

14 Q. What exactly are we looking at here?

15 A. That looks like our implication to be
16 licensed as a resaler in Nevada.

17 Q. And this was a document that you
18 prepared?

19 A. Yes.

20 Q. And the first page bears your
21 signature?

1 Q. And, I guess, not only everything, but
2 everybody. Is that why, with respect to the wage
3 and tax statements for the year 2002, that you
4 kindly brought -- it shows that you worked for
5 two different companies, one being U.S. Bell and
6 the other being Buzz Telecom?

7 A. That's correct.

8 Q. So at some point, your paychecks
9 stopped being U.S. Bell paychecks and became
10 Buzz Telecom paychecks?

11 A. Yes.

12 Q. But nothing else changed?

13 A. Nothing else really changed, no. The
14 sign on the door.

15 Q. From U.S. Bell to Buzz Telecom?

16 A. Yes. But that was important because
17 of the issue with the Southwestern Bell because
18 they wanted to ensure that every bit of signage,
19 letterhead, et cetera was changed. So that was
20 mostly for the fulfillment of that obligation.

21 Q. So that's why U.S. Bell has

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1 A. Correct.

2 Q. Also on the next page, your signature?

3 A. Yes.

4 Q. When we go to attachment B, Bate Stamp
5 05516 and it goes through 05518, can you tell me
6 how it was that the financial statement or the
7 financial information was derived?

8 A. From -- Buzz assumed all of the assets
9 and liabilities of U.S. Bell.

10 Q. Was there a contract of some kind
11 whereby that took place?

12 A. That is one of the things that Russ
13 Millbranth was working on, on that previous memo
14 that we talked about. But it was put in writing
15 that that's how it worked. To my knowledge, I
16 don't remember seeing this specific document, but
17 that was one of the things.

18 Q. The basic idea was that everything
19 that U.S. Bell had would be transferred lock,
20 stock and barrel to Buzz?

21 A. Correct.

1 disappeared from the face of the earth?

2 A. Correct. It was a much better name
3 than Buzz.

4 Q. So when we go to Bate Stamp page
5 05518, which is under the Buzz Telecom
6 profit-and-loss portion. And you go to total
7 income, is that the income that has come in with
8 respect to the sale of Business Options'
9 products?

10 A. That would be my assumption, yes.

11 Q. Do you have any reason to believe that
12 it's anything else?

13 A. No. Again, if the agreements were
14 written up as I understood them to be by Russ
15 Millbranth, it would have been the agreement for
16 Buzz to use the Business Options' licenses and
17 agreements to derive income.

18 Q. Okay. But so far as you know, you've
19 never seen such a document?

20 A. Never saw that, no.

21 Q. The next document I want to show you

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1 is Bate Stamp 00692. The date is 10-02. The
2 president is who?

3 A. Keanan.

4 Q. And the cc for the COB, the COB is
5 Kurtis?

6 A. Correct.

7 Q. So as of October of 2002, you knew at
8 that point that you were going to be leaving the
9 company's employ in the not too distant future?

10 A. I believe I issued my resignation
11 sometime in early September. The initial
12 agreement was that I would stay on until the
13 first of the year, 2003. That date was moved up
14 to November 1 of 2002. And what I was trying to
15 do is -- it looks you some things that I wrote
16 up. I tried to -- the last month or so that I
17 was there, for the most part just write up the
18 things that I had been doing so the next person
19 could do them. And I wanted to recommend to them
20 how to replace me. So I thought that would be
21 the most efficient way to do so.

1 made reference to or you eluded to the document
2 that I'm now going to give you. It's dated
3 10-3-02. It's Bate Stamp Numbers 01004 through
4 01008.

5 A. This is a document I wrote that
6 basically outlined everything that was out --
7 needed to be done. When I wrote this, my
8 understanding was that I was staying until the
9 first of the year. So this was basically a
10 three-month outline of what I could complete or I
11 felt I could come close to completing in that
12 amount of time. As it turned out, I only had a
13 few weeks to do what I could on here. And I
14 spent much of my time writing up directives and
15 policies that would allow someone else to do what
16 I was doing.

17 Q. I sort of scanned through this. And
18 certainly, you can take a look through it too.
19 In looking through it, I didn't see anything in
20 here about Federal Universal Service.

21 A. I don't believe there is because that

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1 Q. Was there ever a discussion that your
2 replacement should actually be an in-house
3 lawyer?

4 A. There was. But I think there were
5 financial considerations concerning, you know,
6 they couldn't afford an attorney.

7 Q. Do we understand the term "Pennywise
8 and pound foolish?"

9 A. Yes. I recommended a CPA because at
10 that time, they were wanting me to work on a lot
11 of tax issues. They wanted to eliminate the CPA
12 that we were using. And at least someone who had
13 some kind of legal experiences.

14 Q. Do you know whether or not your
15 recommendations were followed?

16 A. Shannon, who was hired about a week
17 before I left, had, I believe, some type of
18 experience as a legal aid or something like that.
19 I don't remember exactly what. There was no
20 accountant hired when I left.

21 Q. You probably made -- I think you just

1 was something Kurtis was going to handle. I
2 believe that once we discussed it, I assumed that
3 he was going to handle it.

4 Q. Other than the preparation and filing
5 of that form, FCC form 499-A that we've already
6 seen?

7 A. Correct.

8 Q. Which occurred roughly about this
9 time?

10 A. Yes. A little bit after this. And
11 that was -- there were many items that don't
12 appear on here that I completed during those last
13 few weeks that came up as a "Hey Bill, can you
14 get this done." So I would do it.

15 Q. This is dated October 7, 2002. And it
16 looks like it's sent to the CA. It's Bate Stamp
17 00660.

18 A. This is just him basically telling me
19 not to work on all that other stuff. Instead,
20 write up some directives and things. And once we
21 have a replacement, you can go.

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1 Q. And as far as the reference here to
2 Gene, that's Gene Chill?
3 A. Yes.
4 Q. Gene Chill is currently looking for a
5 legal-type person and an CPA?
6 A. Yes.
7 Q. And then once Gene has the replacement
8 ready to start, you're to take two to three days
9 to train them?
10 A. Yes.
11 Q. And that is what happened basically?
12 A. I took a few days to train Shannon on
13 some basics. And my departure date changed
14 during this last month seven or eight times. And
15 we finally got to the point where all of us were
16 fed up with it changing, so we came up with a
17 November 1 date no matter what. Believe me, they
18 were trying to hire someone. Gene was working
19 very hard. But they got Shannon, luckily, who I
20 think is very capable. And I think what I
21 actually got to train her on was handling some

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1 complaints and doing the state, USF reports and
2 that's about it. And I wrote up -- and I think I
3 told her if you need any help, speak to Kurt or
4 Keanan. And I gave her my phone number to call
5 me. And I think she called me twice in the
6 following couple weeks. And that was it.
7 Q. She did. What did she call you about?
8 A. She called me to ask me where -- she
9 called me to ask me what our tax ID number was.
10 And she called me to ask me where something was
11 in the computer, a letter or something.
12 Q. Did she ever bring to your attention
13 that the FCC had sent an inquiry that focussed on
14 complaints from the Maine PUC?
15 A. No. I didn't have a phone call with
16 her that was more than two minutes long.
17 Q. This is dated 10-14-02. It's Bate
18 Stamp 00664.
19 A. This is just one of the hop, skip and
20 jump on my departure dates. The agreement that's
21 eluded to is my confidentiality agreement that I

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1 signed before I left. And payments for severance
2 were in a severance package that they compiled
3 for me that was initially going to be paid on a
4 monthly basis over a few months. And they
5 actually paid it all out at once.
6 Q. So in terms of who it's addressed to,
7 the VPA is Gene Chill?
8 A. Yes.
9 Q. And corporate affairs is you?
10 A. Correct.
11 Q. You had made reference to a divisional
12 directive or divisional directives. The
13 documents I'm going to show you are not Bate
14 Stamped. But they are dated at about the time
15 that we're talking about here. This particular
16 document is three pages in length. And it
17 concerns tariffs.
18 A. I'm familiar with this.
19 Q. What is it?
20 A. It's basically a simple directive on
21 how to create a tariff when we're getting

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1 licensed in a specific state.
2 Q. In other words, this would be like the
3 set of instructions to whomever your successor
4 was going to be as to how to go about the
5 process?
6 A. Correct.
7 Q. Okay. Because we don't have
8 photocopying here and we don't have Bate Stamp
9 references. I think the way -- let's go off the
10 record for a second.
11 (Discussion was held off the record.)
12 Q. So the document we just discussed is
13 going to be made a part of the deposition as
14 Exhibit No. 1. It's a three-page document, and
15 Mr. Brzycki has indicated that he had prepared
16 this document. And it's dated October 8, 2002,
17 and it's entitled "Tariffs." I'm handing the
18 only copy we have here to the court reporter.
19 (Exhibit No. 1 was marked for
20 identification.)
21 MR. SHOOK: I'm going to follow the

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1 procedure for the next several documents. The
2 next document is a Buzz Telecom divisional
3 directive dated October 9, 2002. It is entitled
4 "Certificate of Authority." It's three pages in
5 length. Is this a document that you prepared?
6 A. Yes.
7 Q. And the purpose of it is to do what?
8 A. Again, to get a company licensed or to
9 repair any problem that comes up with certificate
10 of authority in a given state.
11 Q. When we reach the list of directors
12 that appear on the second page, there's reference
13 there to Kurtis and a reference to Keanan. And
14 it has ownership figures. Do you know where you
15 got this information from in terms of the
16 percentages of their ownership?
17 A. That is, I believe, their ownership of
18 Avatar and the ownership percentage stays the
19 same with some small exceptions. But I believe I
20 got that from Kurtis and Keanan.
21 MR. SHOOK: We're going to make this

1 Q. Next is a Buzz Telecom divisional
2 directive, dated October 14, 2002. It's entitled
3 "NECA." It's two pages in length. You prepared
4 this document?
5 A. Yes.
6 Q. And it was, again, for the purpose of
7 educating your successor?
8 A. Correct.
9 Q. There are some figures that appear on
10 the second page. Apparently, they refer to an
11 example, Kansas?
12 A. Yes.
13 Q. Where did those figures come from?
14 A. They are made up figures.
15 Q. So they are just to be hypothetical?
16 A. Yes. Any figures in any of these
17 documents are hypothetical just to put an example
18 in.
19 MR. SHOOK: This is going to be
20 Exhibit No. 4. I'm handing the only copy to the
21 court reporter.

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1 three-page document Exhibit 2. I'm handing the
2 only copy to the court reporter.
3 (Exhibit No. 2 was marked for
4 identification.)
5 BY MR. SHOOK:
6 Q. Next is a Buzz Telecom divisional
7 directive, dated October 10, 2002. And the title
8 is "Certificate of Public Necessity and
9 Convenience." It is three pages in length. Is
10 this a document that you prepared?
11 A. Yes.
12 Q. Again, for the purpose of educating
13 your successor on what it is that he or she
14 needed to do?
15 A. Correct.
16 MR. SHOOK: I'm going to make this
17 document Exhibit No. 3. I'm handing the only
18 copy to the court reporter.
19 (Exhibit No. 3 was marked for
20 identification.)
21 BY MR. SHOOK:

1 (Exhibit No. 4 was marked for
2 identification.)
3 BY MR. SHOOK:
4 Q. The next is Buzz Telecom divisional
5 directive, dated October 15, 2002. It is
6 entitled "Federal Licensing." Did you prepare
7 this document?
8 A. Yes, I did.
9 Q. For the purpose of educating your
10 successor?
11 A. Correct.
12 MR. SHOOK: This is going to be
13 Exhibit No. 5. It's one page in length. I'm
14 handing it to the court reporter.
15 (Exhibit No. 5 was marked for
16 identification.)
17 BY MR. SHOOK:
18 Q. The next document is Buzz Telecom
19 divisional directive, dated October 15, 2002. It
20 is entitled "Federal Reporting." And then in
21 parenthesis, form 159. It's two pages in length

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1 only because "Corporate Affairs" manages to carry
2 over to the second page. Is this a document you
3 prepared?

4 A. Yes.

5 Q. For the purpose of educating your
6 successor?

7 A. Yes.

8 MR. SHOOK: This will be Exhibit No.

9 6. And I'm handing the only copy to the court
10 reporter.

11 (Exhibit No. 6 was marked for
12 identification.)

13 BY MR. SHOOK:

14 Q. Next is a Buzz Telecom divisional
15 directive, dated October 15, 2002. It is
16 entitled "499 Reporting." It's three pages in
17 length. You prepared this document?

18 A. Yes.

19 Q. For the purpose of educating your
20 successor?

21 A. Correct.

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1 MR. SHOOK: This will be deposition
2 Exhibit No. 7.

3 (Exhibit No. 7 was marked for
4 identification.)

5 Q. Buzz Telecom divisional directive,
6 dated October 28, 2002. It's entitled "Annual
7 Reports." You prepared this document?

8 A. Correct.

9 Q. For the purpose of educating your
10 successor?

11 A. Correct.

12 Q. I notice this under "Business
13 Options," the percentage figures for ownership
14 differ slightly from that which we saw before.
15 Specifically, it now shows Kurtis holding 70
16 percent interest and Keanan holding a 28 percent
17 interest. Do you know how it came do be that the
18 figures changed from the last document where we
19 saw such figures?

20 A. The reason is because there were other
21 owners involved in Business Options when it was

1 started. And as those owners have dropped out,
2 the ownership was purchased or separated
3 differently then it is now with Kurtis and
4 Keanan. So if someone owned two or three percent
5 and they wanted to sell, Keanan may have
6 purchased it to increase his ownership.

7 Q. How is that you would have come to
8 know what these figures are to place them in this
9 directive?

10 A. I think I looked in the corporate
11 books to check the ownership percentages.

12 Q. So this was something you would have
13 checked the corporate books for as opposed to
14 simply asking Kurtis and Keanan what their
15 ownership interests were?

16 A. Yes. Just because I had the books in
17 my office and I could just crack them open and
18 take a look at them.

19 MR. SHOOK: The two-page document is
20 going to be Exhibit 8.

21 (Exhibit 8 was marked for

1 identification.)

2 BY MR. SHOOK:

3 Q. Finally, with respect to this area, at
4 least, Buzz Telecom divisional directive, dated
5 October 28, 2002. It's entitled "Company
6 Relationships." And it's a two-page document.
7 Did you prepare this document?

8 A. Yes.

9 Q. For the purpose of educating your
10 successor?

11 A. Correct.

12 Q. In terms of the companies that are
13 listed here as being owned by Kurtis and Keanan,
14 we have Business Options Inc., we have Buzz
15 Telecom Corporation, we have U.S. Bell, we have
16 HBOS/Facilitel/ATS Services. And finally, we
17 have Galian Inc., in parenthesis, it's TB-247.
18 How is it that you that you came to know that all
19 of these entities were companies owned by Kurtis
20 and Keanan Kintzel?

21 A. Several of them, I incorporated. And

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1 the others, just through knowledge of the
2 company.

3 Q. Were these entities -- were all of the
4 entities ones for which you maintain any kind of
5 corporate records or corporate books?

6 A. The end of my tenure there, yes.

7 Q. The end of your tenure from about when
8 to when?

9 A. April to October of 2002.

10 Q. That period of time when you were
11 responsible for corporate affairs?

12 A. Correct.

13 Q. There are little write-ups that follow
14 the question, "What are all of these companies
15 and what do they do?" In terms of the
16 information that appears for each of those
17 companies, how did you derive that information?

18 A. From knowledge of the company.

19 Q. Is what -- does the material in this
20 two-page document that details what it is the
21 five different companies do, was that information

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1 run by anybody, reviewed by anybody?

2 A. No. Just my write-up.

3 MR. SHOOK: I'd like this as Exhibit
4 No. 9.

5 (Exhibit No. 9 was marked for
6 identification.)

7 BY MR. SHOOK:

8 Q. This sort of drops back in time a
9 little bit. The date is 10-15-02. It's Bate
10 Stamped 00659. And is this a document that you
11 prepared?

12 A. Yes.

13 Q. And you sent it to the president, who
14 is Keanan?

15 A. Correct.

16 Q. And what is it that you're letting
17 Keanan know about?

18 A. I'm trying to let him know where
19 everything is as my office exists. So if he
20 needs to come in and pull some information, he
21 can do so.

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1 Q. So this is just pretty much where
2 files are?

3 A. He had asked me where a few things
4 were just before that. So I thought I'd write it
5 all down for him to make it simple.

6 Q. And it was at this point in time,
7 October of 2002, that Keanan was coming into the
8 office at least on a part-time basis?

9 A. Correct.

10 Q. He was still recovering from whatever
11 the ailment was that he had?

12 A. Yes.

13 Q. Ultimately, you left the employ of
14 Buzz Telecom pursuant to a severance agreement,
15 correct?

16 A. Correct.

17 Q. And the basic idea of this agreement,
18 without going into the specific terms, was a
19 mutual parting of the ways?

20 A. That's correct.

21 Q. And that you received certain benefits

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1 at the time you left?

2 A. Correct.

3 Q. And there were -- what relationship,
4 if any, were you going to maintain with the
5 Kurtis and Keanan Kintzel companies following
6 your departure from their employ?

7 A. I had no intention of maintaining any
8 certain relationship. I made myself available
9 for a month or so if I was needed. I think they
10 actually asked me to make myself available for 90
11 days if any training was required. And they
12 would call me in. And they would pay me to come
13 in and train somebody if it was needed. I never
14 got calls to do so. The only calls I received,
15 as stated previously, were a couple phone calls
16 from Shannon just asking me some basic questions.
17 But I had no intention really of continuing any
18 relationship other than, you know, if I saw them
19 on the street, "How are you doing?"

20 Q. Would you characterize the parting as
21 amicable or less than amicable?

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1 A. I would say amicable.
2 Q. And by "amicable," I'm using one of my
3 fancy words to mean at least somewhat friendly.
4 A. Yes. That's correct.
5 Q. As opposed to ugly?
6 A. Not ugly at all.
7 Q. And what contact, if any, have you had
8 with Kurtis Kintzel subsequent to your departure
9 from the employ?
10 A. I saw him at a restaurant on
11 Thanksgiving. We've e-mailed back and forth a
12 few times concerning things that are e-mailed to
13 me from the states. I spoke to him yesterday
14 about coming in today just to -- he sent me an
15 e-mail about it. He said, "I was in there for
16 about eight hours. So be ready to be in there
17 for a while." And I called to say, "What?" And
18 he just told me, "I was in there for a while, so
19 you should expect to be there well into the
20 afternoon." And that's really about it.
21 Q. Have you had any such contacts with

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1 Keanan?
2 A. I met Keanan one morning. I bumped
3 into him at Starbucks and talked to him for about
4 an hour or so. Right over here on Route 30. I
5 think I also saw him at the restaurant on
6 Thanksgiving. That's the only contact.
7 Q. Have you had any contact with Gene
8 Chill?
9 A. No.
10 Q. Sounds like you didn't miss it?
11 A. I saw him here yesterday. That's
12 about it.
13 Q. We're getting close to the end, I
14 promise. We had talked briefly about the
15 situation that existed in the State of Vermont.
16 And I suppose I could have tried to weave that in
17 while we were going through chronologically. But
18 I'm just handling it separately here. So I want
19 to step back in time a little bit now to May of
20 2002. I'm showing you a document that is Bate
21 Stamp 08076.

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1 A. Okay.
2 Q. Did you receive this letter from
3 Denise Phillips?
4 A. Yes.
5 Q. This is a letter from USBI?
6 A. Correct.
7 Q. I guess also known as Billing
8 Concepts?
9 A. Billing Concepts, I believe, is the
10 parent company.
11 Q. What is it that Denise is telling you?
12 A. What she's telling us is that she's
13 not going to bill our customers in Vermont.
14 Q. And that is because?
15 A. Because we have complaints there.
16 They were contacted by the PUC or PSC in Vermont.
17 And they decided that they would not bill any
18 more customers until they had planned for us to
19 resolve any issues that we had with the state
20 Government.
21 Q. The next document I want to show you

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1 is Bate Stamp 08073. The "Hi, Andrea" note is
2 something that you did?
3 A. Yes.
4 Q. What is it that you're telling Andrea?
5 A. Just telling her that we have a plan
6 to resolve any problems that we have in the State
7 of Vermont so we can continue billing.
8 Q. And if I remember from an earlier
9 e-mail, Andrea is not from the State of Vermont,
10 she's from the Billing Concepts or USBI?
11 A. Correct. She's our representative
12 there.
13 Q. The date -- there's a note here from
14 Andrea. And that's dated May 15. There no
15 indication that I can see in terms of when your
16 note to Andrea is. But I would assume it's
17 around that period of time.
18 A. Probably the same day or the next day.
19 Q. The next document I want to show you
20 is Bate Stamp 08072. Who is Ben Truman
21 (phonetic)?

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1 A. Ben Truman is a representative of the
2 Vermont Government. He is the gentleman who I
3 dealt with before that I spoke to.

4 Q. So before Sarah Hoffman?

5 A. Yes.

6 Q. Okay.

7 A. I'm sure it was.

8 Q. The next document I want to show you
9 is Bate Stamp 08071. And it reflects dates of
10 May 22 and May 23, 2002. This exchange of
11 e-mails between Amy and Ben, would I be correct
12 that what this is about is the reprovisioning
13 aspect of Business Options' practices?

14 A. That's what I would assume, yes.

15 Q. And is it your understanding from this
16 e-mail that -- this exchange of e-mails that the
17 opinion of the State of Vermont representative is
18 that reprovisioning practice is inappropriate?

19 A. Yes.

20 Q. Did you bring this information that
21 appears in these two e-mails to the attention of

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1 Kurtis or Keanan?

2 A. No. I have not seen this before.

3 Q. You've not seen this?

4 A. Not that I recall.

5 Q. But Amy was your assistant at the
6 time?

7 A. Yes. She basically handled all the
8 complaints. And if something were to get more
9 serious, then she would bring it to me. She
10 would do most of the front-line work on the
11 complaints.

12 Q. Would it have been in the ordinary
13 course that if a state representative told Amy
14 that the company practice was inappropriate that
15 she would have brought that to your attention?

16 A. Yes.

17 Q. So did there come a time then when you
18 became aware that the view of the State of
19 Vermont was that the reprovisioning practice that
20 BOI had used with respect to Vermont customers
21 was inappropriate?

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1 A. Yes.

2 Q. And did you bring that information to
3 the attention of anybody else?

4 A. I'm sure I discussed it with Kurtis.

5 Q. You don't have any independent
6 recollection of doing so though?

7 A. No.

8 Q. The next document I want to show you
9 is two pages. It's Bate Stamp 08096 and 08097.
10 It's a letter that -- I'm a little confused here
11 because on the first page, it reflects a date of
12 July 18. And the second page, it reflects a date
13 of July 15, 2002. Do you remember receiving this
14 letter from the State of Vermont?

15 A. Yes.

16 Q. What was your understanding as to
17 why this letter was sent to you?

18 A. They were not happy with our responses
19 to their interrogatories. So they made a
20 decision based on that, that they were going to
21 ask us to withdraw from the state.

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1 Q. Do you know whether you brought this
2 letter to the attention of either Kurtis or
3 Keanan?

4 A. I don't remember specifically, but
5 that would have been the normal action.

6 Q. In the normal course of business, you
7 would have brought a matter such as this to the
8 attention of Kurtis or Keanan?

9 A. Yes.

10 Q. The next document is Bate Stamp 08105.
11 It's a letter dated July 23, 2002. Did you
12 receive this letter?

13 A. Yes.

14 Q. And what is this letter telling you?

15 A. It's a response. They had asked --
16 when we initially had the complaints there, there
17 were some problems with their tariff. They asked
18 that we reissue the tariff and make some changes.
19 I did so. The changes were not exactly what they
20 were looking for. They sent me that letter.

21 Q. Whatever it was that you sent to the

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1 State of Vermont was then rejected?

2 A. Yes.

3 Q. And what, if anything, did you do as
4 result of this letter?

5 A. I believe I issued it twice. And
6 twice, they -- there was something wrong. Not
7 necessarily with the what was actually in the
8 pages that I had submitted, it was the from in
9 which I submitted it. Something like that was
10 wrong. And after the second time, we had already
11 gotten to the point where we were -- a legal
12 action was taking place. And they were telling
13 us to withdraw from the state. So we
14 discontinued trying to reach them.

15 Q. The next document I'm going to hand
16 you is a letter and then a set of information
17 requests that follow that appear to be related to
18 it. It's Bate Stamp 08113 through 08121. This
19 letter and the attachment -- the first set of
20 information requests, et cetera, you received?

21 A. Correct.

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1 Q. And what did you do as a result of
2 receiving them?

3 A. I issued the information that was
4 requested back to the state.

5 Q. In other words, you tried to respond
6 to their set of information requests?

7 A. Correct.

8 Q. Did anybody review what it was that
9 you sent in response to the State of Vermont's
10 information request?

11 A. I don't believe so.

12 Q. Would it have been in the normal
13 course of your job to respond without review to
14 such a set of requests?

15 A. Dependent upon what the information
16 they were requesting, it would have been.
17 Typically, I would write a letter. Then let
18 Kurtis review it. And then send it off. And I
19 don't specifically remember doing so. I remember
20 generating the information. I'm not sure if I
21 passed it by Kurtis or not.

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1 Q. The next document I'm going to show
2 you is dated August 26, 2002. The Bate Stamp is
3 08122. Did you receive this letter?

4 A. Yes.

5 Q. What's going on here?

6 A. We got to the deadline of their
7 information request. And I was going out of the
8 office for a few days, so I requested an
9 extension.

10 Q. So this is a request -- concerning the
11 request for an extension to respond to whatever
12 questions it was that the State of Vermont had
13 sent you?

14 A. Correct.

15 Q. And it makes reference here to medical
16 tests. What's that all about?

17 A. I was going in for some testing. And
18 I was going to miss a few days of work, which was
19 right at the point where we had to have the
20 information submitted.

21 Q. The next document I'm going to show

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1 you is Bate Stamp 08123 through 08129.

2 A. Okay.

3 Q. Have you seen this document before?

4 A. Yes.

5 Q. And you see the title of it,
6 "Preliminary Injunction." What, if any,
7 understanding did you have as to what this
8 document is supposed to be doing?

9 A. Eliminating our license or agreement
10 to sell or bill in the State of Vermont.

11 Q. On the very first page at the bottom,
12 there's a footnote that asserts that BOI did not
13 attend the hearing and did file a notice of
14 appearance as of the date that is noted. Is that
15 assertion accurate so far as you know?

16 A. Yes. I had made some agreements with
17 the representatives of the Public Service Board
18 there. And the agreement was that we would work
19 through it. And everything would be done on a
20 voluntary basis. Including our withdrawal if
21 they saw that as necessary. They went ahead and

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1 kind of went legal on us. And it was not
2 something we were anticipating because we were
3 going along basically doing everything they asked
4 us to do.

5 And there was really -- they called
6 and said, "We're going to have a hearing." And
7 there was no way for me to go to it. My
8 assumption was that we were withdrawing from the
9 state anyway. So I knew what their finding was
10 going to be, so I said to go ahead and have it.
11 So they probably told me there wasn't going to be
12 a hearing, but there was, you know, no purpose in
13 my mind to go. And I know I discussed that with
14 Kurtis.

15 Q. You weren't excited about flying to
16 Vermont?

17 A. No. Vermont sounds probably as good
18 as Mississippi, but I just wasn't anxious to go
19 to that one.

20 Q. Your recollection is, that the
21 possibility of attending the hearing was brought

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1 to Kurtis's attention?

2 A. I told him that there was going to be
3 a hearing. And he said, "Do you want to go?"
4 And I said, "No." And he said, "What's going to
5 happen?" And I said, "They're going to
6 probably -- we're going to get an injunction and
7 they're going to tell us not to sell or bill."
8 And he said, "Are we selling and billing now?"
9 And I said, "No."

10 Q. So he said, "Fine. Don't go"?

11 A. Absolutely.

12 Q. I'm going to show you Bate Stamp
13 Numbers 08135 through 08142.

14 A. Okay.

15 Q. The letter and the -- the two-page
16 letter and then the final stipulation, these were
17 materials that were sent to you?

18 A. Yes.

19 Q. With respect to the final stipulation,
20 was that a matter that -- was that a document
21 that you showed anybody?

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1 A. I issued a copy of it to Kurtis and to
2 Keanan.

3 Q. And that was to let them know that
4 there was some agreement in place regarding the
5 withdrawal of Business Options in Vermont?

6 A. Yes. I had to request money to do the
7 refunds that are mentioned in the final
8 stipulation. So I had to inform Kurtis of why I
9 would make that kind of request. The sum was
10 \$15,000, I think, and some change. And in order
11 to get that type of request through for that kind
12 of money, I had to provide some kind of proof
13 that it was a legitimate request from a state.

14 Q. And the proof would have been that
15 final stipulation?

16 A. Yes.

17 Q. Would it be the case that as of
18 November 26th, 2002, you were no longer
19 physically at the 8380 Louisiana Street location?

20 A. Correct.

21 Q. You had stopped work there about a

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1 month before?

2 A. My last day, I believe, was November
3 1.

4 Q. In terms of general office practices
5 while you were at Business Options, Buzz Telecom,
6 et cetera, if a fax had been addressed to Kurtis
7 Kintzel, where would that fax have gone?

8 A. To Kurtis Kintzel.

9 Q. Would it go to, say, his secretary in
10 the first instance who might have blocked it and
11 then it off someplace else?

12 A. Anytime when Kurtis had an assistant,
13 that assistant would filter anything that was
14 going to him. So it's very possible the fax that
15 was addressed to him would go to her. And she
16 would go through it and say, "This is important.
17 This is not." Kurtis would only look at the
18 important stuff.

19 Q. So with respect to any fax that was
20 sent to Kurtis, it is conceivable that whoever
21 his secretary was could have blocked it and not

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1 shown it to him?

2 A. Certainly.

3 Q. But in the ordinary course, if it were
4 important -- let's say it came from a state PUC,
5 anything from a state PUC.

6 A. If it came from a state PUC and I was
7 there, it would have been directed to me
8 typically. No matter who it was addressed to.
9 Also dependent on who pulled it off the fax. At
10 times when Kurtis had an administrative
11 assistant, that person would not only empty his
12 specific fax machine at his office, but also go
13 to his mailbox and empty it. And he would sort
14 through everything in there before he would see
15 anything. And it would be up to that person's
16 judgment. Not only if Kurtis see something, but
17 if it needed to be routed to someone else like me
18 or Keanan or whomever.

19 (Discussion held off the record.)

20 Q. What I'm showing you next, Mr.

21 Brzycki, is a document dated November 1, 2002.

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1 And it is from the Federal Communications
2 Commission. The letter itself, I believe, is six
3 pages in length. And there's a two-page
4 attachment that follows. The first question I
5 have is, have you ever seen this document before?

6 A. No.

7 Q. Were you aware of its existence prior
8 to today?

9 A. No.

10 Q. Do you have any knowledge as to
11 whether or not the legal department at Business
12 Options responded to this letter?

13 A. No.

14 Q. In your tenure as the head of
15 corporate affairs at Business Options, did you
16 ever receive a letter like this from the Federal
17 Communications Commission?

18 A. Not from the Federal Communications
19 Commission, no.

20 Q. We've gone over some other documents
21 that are similar to this from various states,

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1 but --

2 A. Yes. Never from the Federal
3 Government.

4 Q. Just holding onto the November 1
5 letter for a minute, I'm going to show you
6 another document that's from Business Options
7 dated December 9, 2002. Just glance through
8 that.

9 (Witness Reviewing Document.)

10 Q. Have you ever seen the response that
11 Business Options sent to the Federal
12 Communications Commissions before?

13 A. No.

14 Q. Were you aware that such a response
15 had been prepared?

16 A. No.

17 Q. Keep them both in front of you. I
18 want you to take a look at the questions and then
19 Business Options' answers. Given what you know
20 having worked at corporate affairs in Business
21 Options, was question one responded to fully and

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1 accurately by Business Options?

2 A. No.

3 Q. What is it that you see that leads you
4 to that opinion?

5 A. A description of each subsidiary or
6 affiliate identified. I don't see anything
7 identified. A list of officers and directors for
8 each affiliate entity, I don't see any of that.
9 Provide all relevant documents. And I think I
10 saw one, just the State of Illinois. That's it.
11 There seems to be a lot missing.

12 Q. If you could, please do the same with
13 respect to question two.

14 A. I don't know what the registration
15 requirements are, but I don't know why the
16 certificate of authority from Illinois would be
17 included in a Federal request.

18 Q. Moving on to question three. And I
19 recognize question three has a number of
20 subparts. So why don't you take all the time you
21 need before trying to respond.

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1 (Witness Reviewing Document.)

2 Q. And also to assist your understanding
3 with respect to question three, it refers to the
4 complaints, the list of complaints that are
5 attached to the letter.

6 A. From the State of Maine?

7 Q. Right.

8 A. They basically didn't answer the
9 question at all, number three.

10 Q. What makes you say that?

11 A. They don't answer anything that's
12 requested. They're basically saying they did
13 none of this. And they should have been
14 addressing each paragraph independently. Dealing
15 with it in a much more expanded way.

16 Q. Does that mean that to your
17 knowledge -- and that, I'm sure has been
18 bolstered apart by all the documents that we
19 looked at earlier today. That there were some
20 switches of some kind that took place post April
21 1, 2002 with respect to customers that are noted

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1 on the attachment.

2 A. Yes. Just from my knowledge of the
3 company, but also, we know that some people were
4 reprovisioned or whatever the proper term is.
5 That should have been listed. And those
6 complaints were in the office.

7 Q. How is it that somebody in Shannon's
8 position could have come across the information
9 necessary to answer question three?

10 A. It's very possible she did not
11 understand what was there. But every piece of
12 documentation that I just wrote that we went
13 through, she had a copy of.

14 Q. In other words, the nine directives
15 that have become exhibits, you had left with her?

16 A. Correct.

17 Q. Did you talk about them with her other
18 to say, "Here they are"?

19 A. I think I just gave them to her and
20 told her to call me if she had any questions.

21 Q. Good luck, amiga?

1 A. Exactly.

2 Q. Okay.

3 A. I don't think that she comes from a
4 telecommunications background. So it's possible
5 that she just had no idea. I think she comes
6 from a military background. But obviously, they
7 did not respond the way I would have responded if
8 I'd have been there.

9 Q. How about question four?

10 A. Again, there's more information that
11 they should have included. They did, at least,
12 provide some of that documentation. But there
13 are three scripts minimum that have been used.
14 And also scripts for the previous company. So
15 you should have at least got a set of Buzz
16 scripts and a set of U.S. Bell or Business
17 Options' scripts.

18 Q. How about question five?

19 A. Obviously, they're giving you almost
20 no information that's requested. They're just
21 giving you a very basic description.

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1 Q. Question six.

2 A. Again, it's the same thing. They're
3 not really treating this with the seriousness
4 that it should have been treated with. And it
5 looks like they just didn't know what to do.
6 They went to somebody that's not in legal to ask
7 for help and someone who really doesn't know.

8 Q. Are you now referring to the answers
9 that were provided with respect to seven through
10 eleven?

11 A. Yes.

12 Q. Specifically, with respect to question
13 seven, take a look at the question and take a
14 look at the answer provided. And the basic
15 outstanding question is whether the information
16 provided in response to the FCC's question was
17 complete and accurate.

18 A. No. Certainly not complete, but we
19 had misrepresentation complaints.

20 Q. Such as we had talked about with
21 respect to that person Albert, who is a sales

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1 manager. That had taken place post April 1,
2 2002?

3 A. That would be a subject I'd have to go
4 back and look even in the case of these Maine
5 complaints. At the very minimum over a normal
6 course of business, you get a misrepresentation
7 complaint one or two a week without question. No
8 matter what, people think -- when you call, some
9 think you're from AT&T or what have you. Even if
10 they say, "Are you from AT&T?" And you say, "No.
11 I'm not from AT&T." They hear you say "AT&T."
12 And if they complain about the sale, that's
13 misrepresentation.

14 Q. Or at least it could be found to have
15 been such?

16 A. Right. That would be the way we would
17 define it if that's the occurrence.

18 Q. Moving on to question eight.

19 A. It may be accurate that he didn't find
20 any examples. It's kind of a general answer in
21 "We do have our ears up in monitoring and anyone

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1 on the sales floor for anyone who says AT&T,
2 Sprint, any name that's recognizable." It's
3 possible that there are no cited examples of
4 that. My experience is that you get someone on
5 the floor typically at least once a month who
6 thinks that they can get away with that. That's
7 the kind of people that you hire and fire in that
8 industry.

9 Q. In order to properly answer question
10 eight, what kind of research would have been
11 involved?

12 A. He would have to go in and look at
13 complaints and see if there was anything there.
14 And also review employee files to see if anyone
15 was fired for misrepresentation. And with every
16 person who is dismissed from the company, a
17 little form is made out, it's called a routing
18 out form. And a reason is given why they're
19 being routed out. Whether it's this person
20 decided to quit; this person walked off the job;
21 this person said he was from AT&T; this person

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1 slapped somebody. Whatever the reason that is on
2 there, he would need to review those. Usually,
3 those stick out in your memory. Something like a
4 misrepresentation or a fight or something like
5 that because they don't happen that often.

6 Q. Given that the letter is inquiring
7 about activity or instances that occurred after
8 April 1, and it's my recollection from your
9 testimony and that of Mr. Chill that he came on
10 the scene sometime after April 1. What could he
11 have done to have learned what, if anything, had
12 transpired prior to his coming on board going
13 back to April 1?

14 A. He would have had to physically go
15 through the employee files and physically go
16 through the complaint files to find that
17 information predating himself.

18 Q. Moving on to question nine.

19 A. Again, it's the same situation where
20 he would have to go back and look through the
21 documents to find it. Unless he had specifically

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1 dismissed somebody or had to deal with it, that's
2 another thing that happens commonly. The sales
3 representative will say, "If you say 'no' to any
4 of the questions, I'm going to get fired." Or
5 they'll say "They are going to call back and
6 check on how I'm doing my job." And the person
7 will take that as "Well, if I say no, they're
8 going to get in trouble."

9 So a lot of the people that we deal
10 with are older people because that's who is home
11 during the day. Potentially more gullible than
12 the younger crowd. Again, it's all research. He
13 may be accurate here. From my experience, it's
14 kind of hard to believe that there were no
15 instances over that period of time, but he may
16 just not have known.

17 Q. Question ten. If it doesn't appear on
18 that page, it wasn't answered.

19 A. Obviously, the information is not
20 there.

21 Q. Question eleven.

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1 A. His answer to eleven kind of negates
2 what he said in the other questions because he
3 says, "Yes. There's somebody that meets what
4 you're saying," but it's not listed anywhere
5 above. And he doesn't say what she did to be
6 dismissed. It's kind of a confusing answer. But
7 obviously, it's incorrect.

8 Q. Thank you. This is a hypothetical
9 now, had you received a letter like the November
10 1, 2002 letter from the Federal Communications
11 Commissions, would your response have been
12 reviewed by anyone prior to its being sent to
13 FCC?

14 A. Certainly. I would have -- I would
15 have first issued a copy of it to Kurtis asking
16 him -- you know, "Here's what we got. I'm going
17 to prepare a response. We'll sit down and go
18 over the response, rewrite it, and we'll send it
19 out." And that's what I would have done. I
20 would have responded to each question, taking it
21 in to him, let him review verbiage that I used,

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1 what have you. He would red-pen it to what he
2 wanted specifically. And we would send it out.
3 I would never send out a letter of that magnitude
4 without talking to him or Keanan, whomever was
5 there. Most likely, considering it's an
6 interrogatory from the Federal Government,
7 Kurtis.

8 Q. Were you aware that there came a time
9 when Business Options Inc. filed a Section 63.71
10 Application with the Federal Communications
11 Commission relative to the situation that we have
12 been talking about in the State of Vermont?

13 A. No. What is that?

14 Q. I'm going to show you.

15 A. Okay.

16 Q. This is the document in question and
17 it also includes as an attachment to it, a
18 request for waiver. It was filed with the FCC on
19 December 27, 2002.

20 A. No. I've never seen this.

21 (A short break was taken.)

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1 MR. SHOOK: Happy news, no further
2 questions from me.

3 MR. HAWA: I'll going to keep it very
4 brief. I'm going to forgo the bulk of my
5 questions because James was so thorough and
6 covered almost everything. And I just wanted to
7 touch on a couple of points for clarification.
8 These are all questions related to what you and
9 James discussed.

10 EXAMINATION

11 BY MR. HAWA:

12 Q. You stated that when you were
13 originally hired by Business Options or Buzz
14 Telecom, you received a TV-sized box of
15 regulatory stuff when you arrived?

16 A. I was originally hired by Creative
17 Financial Options. And it was after I was
18 transferred to Business Options and placed in the
19 vice-president of establishment post that --
20 Kurtis had an administrative assistant who was
21 working on that type of thing. When she quit, a

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1 box was delivered to my office. And they said
2 "Go get 'em." And that box was full of letters
3 from each state saying, "We need this report. We
4 need that report."

5 Q. So prior to your arrival, is it fair
6 to say that things were in disarray from a
7 regulatory stand point?

8 A. Correct. Not my arrival though, prior
9 to my being put in that position.

10 Q. Prior to --

11 A. I was with the company, just not
12 working there.

13 Q. So absent your presence, regulatory
14 disarray?

15 A. Yes.

16 Q. Is the Code of Federal Regulations
17 really in the public library?

18 A. Yes. The Lake County Public Library.

19 Q. Really. And you, without any previous
20 legal experience, went and was able to find the
21 Code of Federal Regulations and to find the

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1 verification rules?

2 A. Yes. I was to find it, I'm not sure
3 that I deciphered it correctly. But I found it
4 and found the sections that pertained to
5 verifications. I made copies and brought them
6 back to the office.

7 Q. And you were also trying to figure out
8 what would be needed in the telemarketing script?

9 A. Yes.

10 Q. But again, you were looking up the
11 rules, not necessarily able to decipher them?

12 A. Correct.

13 Q. You said it was not uncommon for
14 telemarketers to say that they were calling on
15 behalf of some other company. Was that a problem
16 that you dealt with?

17 A. That's correct.

18 Q. What was the punishment?

19 A. We tried to go with a
20 three-strikes-and-you're-out system. They would
21 be warned once and retrained on the script. A

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1 second time, written up. And take another look
2 at the script until they knew it verbatim. Third
3 time, they were dismissed. That was not an
4 absolute, but that was typically what was done
5 while I was in charge of human resources.

6 Q. Then you also said that telemarketers
7 would -- knew to do this or learned to do this by
8 looking at other telemarketers who were having
9 success. And they would ask them what they were
10 doing. And then they would duplicate that. And
11 it may be a while before that practice was
12 discovered and flushed?

13 A. Correct.

14 Q. Your testimony about Shannon Dennie, I
15 wasn't quite clear. At one point, I thought you
16 said you weren't happy with that hire. Not with
17 her as a person, you said she was fine, I don't
18 want to suggest otherwise. But at other times,
19 you said she was smart and you wanted to hire
20 her. They're necessarily inconsistent, I just
21 ask for clarification.

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1 A. I recommended that we hire her. I
2 don't remember saying that I didn't like her.
3 The person whose hire I was against was Gene
4 Chill.

5 Q. At one point, counsel for the FCC
6 asked you -- you made a reference to a
7 passive-aggressive relationship between you and
8 Keanan. And it was clarified to mean that
9 "Keanan seems to have a way of using his
10 authority to ask other people to do things rather
11 than do them himself."

12 MR. SHOOK: I was the person who used
13 passive-aggressive.

14 MR. HAWA: Yes.

15 BY MR. HAWA:

16 Q. Counsel for the FCC was the one who
17 used passive-aggressive. I think that was
18 characterized that Keanan Kintzel used his
19 authority to ask other people to get things done
20 rather than do them himself.

21 A. My meaning was not that. Keanan did a

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1 great many things himself for the company. What
2 I was trying to say is, that at some point, he
3 would be working on something. And he may turn
4 it over to somebody else to complete it because
5 he was tired of working on it or frustrated by it
6 or what have you. And it was not always -- he
7 wasn't always consistent with what he would do by
8 himself or turn over to someone else.

9 Q. Let me break that into two parts. In
10 response to the first part, in your
11 understanding, isn't it precisely what a senior
12 executive of a company should do is, rather than
13 tackle things themselves, but to delegate it to
14 subordinates within the company?

15 A. Absolutely. Consistently.

16 Q. In your understanding of corporations,
17 isn't a common thing for executives to give
18 instructions and give contrary instructions,
19 think of things one day and forget them the next?

20 A. Is that my experience? Yes, it is.

21 Q. You and Keanan Kintzel were close,

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1 personal friends for more than five years?
2 A. Correct.
3 Q. Are you still close, personal friends?
4 A. No.
5 Q. When did you stop being close,
6 personal friends?
7 A. Three years ago.
8 Q. What happened that lead you to stop
9 being close?
10 A. Keanan changed some personal habits.
11 Bad habits that we both had, going out drinking,
12 things like that. And I continued to go out
13 drinking and having fun. And we just -- our
14 habits grew apart. So we weren't as close as we
15 were before.
16 Q. You went through a lot of material
17 with counsel for the FCC. And your tasks seem
18 daunting, 50 states plus the FCC regulatory
19 requirements, filings, multiple filings, EEOC
20 complaints -- complaint, rather. Customer
21 service, discipline, hiring. So as you went

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1 through, there were a lot of mistakes revealed in
2 the course of your performance. Which is
3 completely understandable, I'm not suggesting
4 that. But there were a lot of mistakes that
5 occurred within your realm of responsibility.
6 Especially, it seems, within the 2001-2002 time
7 period. Is that yes?
8 A. I haven't heard a question.
9 Q. You made a lot of mistakes?
10 A. I would not say that based on the
11 amount of work that I did that there were a lot
12 of mistakes. There certainly were mistakes.
13 Comparatively speaking with my knowledge of how
14 the corporation works, I would say that there
15 were comparatively few mistakes.
16 Q. With respect to that EEOC complaint
17 where we saw correspondence where it was
18 suggested that you had missed a deadline. You
19 were suggesting that it was, in fact, the outside
20 counsel that missed the deadline.
21 A. I was not aware of the letter until

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1 the day I brought it to Kurtis's attention.
2 MR. SHOOK: I think another matter
3 that was clarified was that, in fact, the date
4 had not been missed. It was simply a matter that
5 the EEOC had not responded to a request for
6 extension in a timely enough manner for everyone
7 to know that the deadline had not, in fact, been
8 missed.
9 MR. HAWA: I have nothing further.
10 MR. SHOOK: I have nothing further.
11 Mr. Brzycki, you have the opportunity to review
12 the deposition and sign it if you wish. If you
13 don't, it will simply be typed up and sent to
14 Washington to be included as part of the record
15 in this proceeding. So basically, if you want to
16 have a copy sent to you for review purposes and
17 signing purposes, you can make that arrangement
18 with the court reporter.
19 THE WITNESS: I don't necessarily need
20 to.
21 MR. SHOOK: Thank you very much for

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1 coming.
2 (Reading and signing waived.)
3 (Deposition concluded 3:58 p.m.)
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1 CERTIFICATE OF REPORTER/NOTARY PUBLIC

2 STATE OF INDIANA, to wit:

3 I, NOVA HOLLISTER, a Notary Public of

4 the State of Indiana, do hereby certify that the

5 within-named witness personally appeared before

6 me at the time and place herein set out, and

7 after having been duly sworn by me, according to

8 law, was examined by counsel.

9 I further certify that the examination

10 was recorded stenographically by me and this

11 transcript is a true record of the proceedings.

12 I further certify that I am not of

13 counsel to any of the parties, nor in any way

14 interested in the outcome of this action.

15 As witness my hand and notarial seal

16 this 28th day of July, 2003.

18 -----
19 Nova Hollister
Notary Public

20 My Commission Expires: 07-06-09

IN THE MATTER OF: BUSINESS OPTIONS, INC.
Deposition of William Brzycki

\$1,000 - 8380
July 18, 2003

<p>-\$-</p> <p>\$1,000 [3] 75:17,18 83:14</p> <p>\$10,000 [1] 169:9</p> <p>\$100,000 [1] 77:15</p> <p>\$15,000 [1] 263:10</p> <p>\$150,000 [2] 166:19 167:2</p> <p>\$200 [2] 19:13 20:6</p> <p>\$3.75 [2] 193:3,20</p> <p>\$50,000 [1] 77:15</p> <p>\$8.00 [1] 94:12</p> <p>-'-</p> <p>'96 [1] 224:14</p> <p>'97 [1] 224:14</p> <p>'98 [7] 40:2,10 43:17 50:9 51:16 53:3,3</p> <p>'99 [2] 50:9 65:12</p> <p>'em [1] 280:2</p> <p>'no' [1] 276:3</p> <p>-0-</p> <p>0007179054 [1] 1:8</p> <p>00659 [1] 246:10</p> <p>00660 [1] 232:17</p> <p>00664 [1] 234:18</p> <p>00671 [1] 90:15</p> <p>00672 [2] 90:16 97:21</p> <p>00675 [1] 6:13</p> <p>00678 [1] 6:13</p> <p>00688 [1] 223:12</p> <p>00692 [1] 229:1</p> <p>00693 [1] 206:21</p> <p>00697 [1] 207:18</p> <p>00700 [1] 205:7</p> <p>00701 [1] 204:15</p> <p>00705 [1] 202:13</p> <p>00711 [1] 190:5</p> <p>00716 [1] 195:10</p> <p>00745 [1] 146:9</p> <p>00746 [2] 131:3 133:5</p> <p>00751 [1] 125:1</p> <p>00755 [1] 118:2</p> <p>00756 [2] 113:19 115:19</p> <p>00759 [1] 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**IN THE MATTER OF: BUSINESS OPTIONS, INC.
Deposition of William Brzycki**

**9 - aware
July 18, 2003**

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